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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/666,856  | 09/17/2003  | Robert Choi          | KRN 318C            | 5777             |
| 23581   | 7590        | 11/25/2005           | EXAMINER            |                  |
| KOLISCH HARTWELL, P.C.<br>200 PACIFIC BUILDING<br>520 SW YAMHILL STREET<br>PORTLAND, OR 97204 |             |                      | CARTAGENA, MELVIN A |                  |
|   |             |                      | ART UNIT            | PAPER NUMBER     |
|   |             |                      | 3754                |                  |

DATE MAILED: 11/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/666,856

Applicant(s)

CHOI ET AL.

Examiner

Melvin A. Cartagena

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 September 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-13, 21-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,712,594 to Schneider in view of US 5,811,359 to Romanowski.

Schneider shows a liquid storage and delivery system as seen in Figs. 10-12, 14 and 20, having a multilayered container with flexible reservoir 82, a sealable fill port 83, exit ports 84 to draw fluid from the reservoir, an elongated downstream assembly 19 in fluid communication with the exit port 11, a mouth piece, see column 2, lines 32-37, fitting adapter 118, the device is packed for multiple users as seen in Figs. 11. Schneider is silent about the type of material used to make the layers of the container, which are heat-sealed. Romanowski shows a multiple layer material to make protective garments as seen in Figs. 1 and 2, the layer containing of ethylene vinyl alcohol which are resistant to chemical agents such as sarin and mustard, see column 6, lines 43-68, transparent materials can also be used, see column 1, lines 55-61. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to make the device of Schneider using chemical resistant material suitable for the working environment as taught by Romanowski to properly protect the user from exposure to hazardous environments, while the user can consume nourishment liquids.

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With respect to the thickness and the resistance to the chemical exposure of the layers as claimed in claims 4-9 and 29-32, It would have been obvious to a person with ordinary skill in the art at the time the invention was made to make the layers of a suitable thickness to provide adequate protection according to the level of chemical in the environment, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. As per MPEP 2144.05.

3. Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,712,594 to Schneider as modify by US 5,811,359 to Romanowski as applied to claims 1 and 23 above, and further in view of US 5,074,601 to Spors.

The Schneider-Romanowski combination shows all claimed features as discussed above except for the details of the quick connector having a resilient ring engaged with a female coupling. Spors shows a quick-release connector as seen in Figs. 1-3 having a male and female members 1 and 2 respectively, a resilient ring 14, multiple grooves 10, mount 21, guard 3 and connecting ends 8 and 18. It would have been obvious to a person with ordinary skill in the art at the time the invention was made to use the quick-connector of Spors in the device of the Schneider-Romanowski combination to reduce the time it takes to engage the protective gear with the proper attachments in an emergency to reduce the risk of espousing the user to hazardous environments.

#### ***Response to Arguments***

4. Applicant's arguments filed September 02, 2005 have been fully considered but they are not persuasive.

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5. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the primary reference is directed to chemical warfare environments containing toxic gases where clothing and masks are effective to shield or filter the particular chemical agent involve, see column 1, lines 18-49. The secondary reference is directed to a fire retardant barrier structure useful for manufacturing protecting gear for military personal and equipment from fire, chemical and biological agents. The secondary reference discloses a protective material resistant against chemical and biological agents that may be found in combat environments and has the additional benefit of protecting the user from fire, another potential hazard in a combat environment.

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7. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., an elongated dink tube in fluid communication with a bite-actuated mouthpiece) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). A fitting is positively recited with the function that is possible to connect a bite-actuated mouthpiece to the fitting.

#### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melvin A. Cartagena whose telephone number is (571) 272-4924. The examiner can normally be reached on M-F (7:30AM to 4:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Y. Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MAC 11/19/05  
MAC



MICHAEL MAR  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700